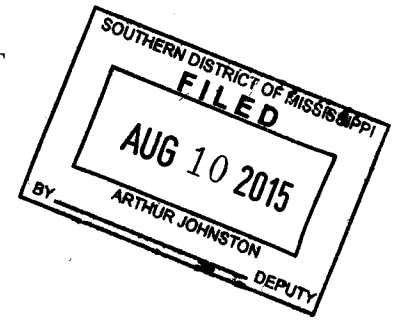


IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



BRENDA TYSON, individually, as the natural daughter
and a wrongful death beneficiary of the life of BONNIE H.
BARDWELL, and as Administratrix of the Estate of
BONNIE H. BARDWELL, Deceased

PLAINTIFF

V.

CIVIL ACTION NO. 3:15cv571-WHB-JCG

LAKELAND NURSING AND
REHABILITATION CENTER, LLC;
and DEFENDANTS A THROUGH M

DEFENDANTS

NOTICE OF REMOVAL

In accordance with 28 U.S.C. § 1446 and Local Rule 5(b), Lakeland Nursing and Rehabilitation Center, LLC ("Lakeland") removes the civil action styled *Brenda Tyson, individually, as the natural daughter and a wrongful death beneficiary of the life of Bonnie H. Bardwell, and as Administratrix of the Estate of Bonnie H. Bardwell, Deceased v. Lakeland Nursing and Rehabilitation Center, LLC*, Civil Action No. 25CI1:15cv00356-WAG, from the Circuit Court of the First Judicial District of Hinds County, Mississippi to this Court on the following grounds:

1. Plaintiff Brenda Tyson filed this medical negligence action on July 8, 2015. The lawsuit arises out of the care and treatment provided to Bonnie Bardwell while a resident of Lakeland Nursing and Rehabilitation Center, LLC. According to the Complaint, Bonnie Bardwell suffered injuries as a result of Lakeland's alleged negligence.

2. Plaintiff served Lakeland with a copy of a Summons and Complaint on July 14, 2015. This Notice of Removal is filed within thirty days of receipt of the Summons and Complaint and is thus timely under 28 U.S.C. § 1446.

3. Venue is proper in the United States District Court for the Southern District of Mississippi, Northern Division because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 104(b)(1).

4. This Court has original jurisdiction over this action—there is complete diversity of citizenship between Plaintiff and Defendant and more than \$75,000 is in controversy, exclusive of interest and costs. *See* 28 U.S.C. § 1332

5. Diversity of citizenship exists because Plaintiff alleges to be a citizen of Mississippi, and Lakeland is not a citizen of Mississippi. Compl. ¶1. As set forth in detail below, Lakeland Nursing and Rehabilitation Center, LLC, is a Mississippi limited liability company whose members are all citizens of the State of New York. Therefore, Lakeland is a citizen of New York, not Mississippi. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (holding that the citizenship of a LLC is that of all its members).

6. Lakeland Nursing and Rehabilitation Center, LLC's members are D&N, LLC, and DTD HC, LLC. D&N, LLC, and DTD HC, LLC, are New York limited liability companies. D&N, LLC's members are Norbert A. Bennett, the Norbert A. Bennett Children's Trust, and the Norbert A. Bennett Grand-Children's Trust. Mr. Bennett is a citizen of New York. The trustee of the Norbert A. Bennett Children's Trust is Ronald Bennett, a citizen of New York, and the trustee of the Norbert A. Bennett Grand-Children's Trust is also Ronald Bennett. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 n. 6 (5th Cir. 2009) (citing *Navarro Savs. Ass'n v. Lee*, 446 U.S. 458, 464 (1980) (holding that the citizenship of a trust is that of its trustee)).

7. DTD HC, LLC's members are Donald T. Denz and the Donald T. Denz Irrevocable Trust. Mr. Denz is a citizen of the State of New York. The trustee of the Donald T. Denz Irrevocable Trust is Martin J. Clifford, a citizen of New York.

8. It is apparent that the amount in controversy requirement is met because Plaintiff seeks damages for the wrongful death of Bonnie Bardwell. *See De Aguilar v. Boeing Co.*, 11 F.3d 55, 57 (5th Cir. 1993) (finding complaint for wrongful death to be facially apparent for damages exceeding amount-in-controversy requirement). Moreover, Plaintiff seeks punitive damages. A claim for punitive damages also must be considered while evaluating the amount in controversy. *See St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998) (holding that a district court must consider any claim for punitive damages when calculating the amount in controversy); *Sun Life Assur. Co. of Canada (U.S.) v. Fairley*, 485 F. Supp. 2d 731, 735 (S.D. Miss. 2007) (same).

9. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Lakeland in this action are attached as Exhibit A to this Notice. A copy of the entire state court record will be filed in this action.

10. A Notice of Filing will also be filed with the Clerk of Court for the Circuit Court of Hinds County, Mississippi.

Lakeland respectfully requests that this Court assume full jurisdiction over this civil action.

This the 10th day of August, 2015.

Respectfully submitted,

LAKELAND NURSING AND
REHABILITATION CENTER, LLC

By Its Attorneys,

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, PC

By: 
ADRIA H. JETTON

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CERTIFICATE OF SERVICE

I hereby certify that I have mailed the foregoing *Notice of Removal* via U.S. mail, postage prepaid, to the following:

Wayne E. Ferrell, Jr.
LAW OFFICES OF WAYNE E. FERRELL, JR., PLLC
405 Tombigbee Street
Post Office Box 24448
Jackson, Mississippi 39225-4448

COUNSEL FOR PLAINTIFF

This the 10th day of August, 2015.


ADRIA H. JETTON